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8 **UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

9 THE ESTATE OF CINDY LOU HILL, by
10 and through its personal representative,
11 Joseph A. Grube; and CYNTHIA
12 METSKER,
13 individually,

14 Plaintiffs,

15 vs.

16 NAPHCARE INC., an Alabama
17 corporation; HANNAH GUBITZ,
18 individually; and SPOKANE COUNTY, a
19 political subdivision of the State of
20 Washington.

21 Defendants.

NO. 2:20-cv-00410-MKD

**DEFENDANT SPOKANE
COUNTY'S OPPOSITION TO
NAPHCARE'S MOTION TO
BIFURCATE THE TRIAL**

22 **I. INTRODUCTION**

23 Co-Defendant NaphCare has filed a motion to bifurcate the upcoming trial in this matter
24 as follows: the first phase would consist of the jury determining NaphCare's liability for
25 plaintiffs' claims against NaphCare and Hannah Gubitz for negligence and alleged civil rights
26 violations. Dkt. 1, pp. 20-22. If the jury finds liability as to either NaphCare or Ms. Gubitz, the
second phase would begin immediately, with the same jury would considering damages against
all liable defendants. Dkt. 115. Spokane County opposes the bifurcation of the trial because it
would not promote judicial efficiency and it would be unfair to Spokane County.

II. ARGUMENT

NaphCare's motion accurately sets forth the facts relevant to its motion with two minor corrections: First, plaintiffs allege claims of negligence and civil rights against NaphCare and Hannah Gubitz, not just negligence. Dkt. 1, pp. 20-22. Second, the jury cannot award punitive damages against Spokane County. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271, 101 S.Ct. 2748, 69 L.Ed.2d 616 (1981) ("a municipality is immune from punitive damages under 42 U.S.C. § 1983.")

Bifurcation is the exception rather than the rule of normal trial procedure; Rule 42(b) allows, but does not require, bifurcation to further convenience or avoid prejudice. *See Hangarter v. Provident Life & Acc. Ins. Co.*, 373 F.3d 998, 1021 (9th Cir.2004); *see also* Fed.R.Civ.P. 42 advisory committee's note (1966 Amendment) ("[S]eparation of issues for trial is not to be routinely ordered[.]").

"With respect to both discovery and trial," the moving party has the "burden of proving that the bifurcation will promote judicial economy and avoid inconvenience or prejudice to the parties." *Spectra-Physics Lasers, Inc. v. Uniphase Corp.*, 144 F.R.D. 99, 101 (N.D.Cal.1992) (citations omitted); *see also* *Burton v. Mountain W. Farm Bureau Mut. Ins. Co.*, 214 F.R.D. 598, 612 (D.Mont.2003).

Factors that courts have considered in determining whether bifurcation is appropriate include: (1) whether the issues are significantly different from one another; (2) whether the issues are to be tried before a jury or to the court; (3) whether the posture of discovery on the issues favors a single trial or bifurcation; (4) whether the documentary and testimonial evidence on the issues overlap; and (5) whether the party opposing bifurcation will be

1 prejudiced if it is granted. *Dallas v. Goldberg*, 143 F.Supp.2d 312, 315 (S.D.N.Y.2001)
2 (citations omitted).

3 Courts also consider the complexity of the issues and possible jury confusion. *See IPPV*
4 *Enters. v. Cable/Home Commc'n Corp.*, 26 U.S.P.Q.2d 1714, 1715 (S.D.Cal.1993). "Bifurcation
5 is particularly appropriate when resolution of a single claim or issue could be dispositive of the
6 entire case." *Drennan v. Maryland Cas. Co.*, 366 F.Supp.2d 1002, 1007 (D.Nev.2005) (citing
7 *O'Malley v. United States Fidelity and Guaranty Co.*, 776 F.2d 494, 501 (5th Cir.1985)
8 (bifurcation was proper when resolution of breach of insurance contract claim effectively
9 disposed of plaintiff's bad faith claim against insurance company)). Bifurcation is
10 **inappropriate** where the issues are so intertwined that separating them would "tend to
11 create confusion and uncertainty." *See Miller v. Fairchild Indus., Inc.*, 885 F.2d 498, 511 (9th
12 Cir.1989) (citation and quotation marks omitted).

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14 In the present case, the factors laid out above do not support bifurcation. First, the
15 evidence plaintiffs will present in a liability phase will likely be largely duplicative of the
16 evidence they will present in a damages phase trial. Thus, the issues between phases would not
17 be significantly different and would need to be presented twice. This does not promote judicial
18 efficiency. Second, NaphCare's proposal involves using the same jury for both phases.
19 Requiring a jury to hear the case in two phases is inconvenient to that jury and will likely
20 lengthen their jury service. Finally, Spokane County may be prejudiced by the fact that it will
21 be sidelined in liability only phase in which the jury will hear evidence that it will consider in
22 the damages phase that will include Spokane County. The potential for juror confusion in such
23 a scenario is higher than the traditional method of trying damages and liability at the same
24 time.
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1 Because bifurcation of the upcoming trial will not promote judicial efficiency and may
2 prejudice Spokane County, the County respectfully requests that the Court deny the motion to
3 bifurcate the trial.

4 DATED this 31st day of May, 2022.

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6 LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.

7 */s/ John E. Justice*

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Tam Truong
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